

Page 90

1 quote, unanimously, closed quote, adopted a
2 Resolution Approving Agreement and Plan of Merger
3 with Provident Financial Group, Inc." Do you see
4 that?

5 A. I see that.

6 Q. What are you quoting in that section?

7 A. Again, it's a combination of the amended
8 complaint and board minutes.

9 Q. Where did you get the quote for
10 unanimously from?

11 A. I'm not sure whether I provided that
12 myself or I took it directly out of the minutes. I
13 think it came out of the minutes, but I'm not sure.

14 Q. The minutes of the August 2nd, 1999,
15 meeting?

16 A. I believe that's correct.

17 Q. Paragraph 21. This section that we are
18 now talking about deals with -- it's entitled
19 Failure to Carry Out Fiduciary Responsibilities?

20 A. That's correct.

21 Q. We have previously talked about the
22 basis for your opinion on fiduciary duty to the
23 extent it's based upon review of cases or statutes.
24 Is the same true of the fiduciary opinions you give

Page 92

1 Q. Paragraph 21. You state that the
2 clearest -- second sentence -- "The clearest and
3 most egregious single instance of such behavior is
4 that the board, even though it recognized the need
5 for and established a mandatory retirement policy
6 for board members, exempted the board members at
7 the time the policy was enacted." Do you see that
8 statement?

9 A. Yes, I do.

10 Q. You refer to the transcript of Norb
11 Brinker?

12 A. Yes, I do.

13 Q. Have you reviewed the board minutes that
14 deal with that?

15 A. No, I have not.

16 Q. Why is that particular instance, as you
17 opine here, an example of breach of fiduciary duty?

18 A. They, themselves, recognized that an
19 elderly board probably would not or could not do
20 the type of job that was necessary. Why else would
21 they have approved a resolution to set a mandatory
22 retirement age, and then they turned around and
23 exempted themselves?

24 Q. Do you have any information in terms of

Page 91

1 in this section?

2 MR. BRAUTIGAM: Objection.

3 A. It is not based on review of statutes.

4 Q. And you are not qualified to render an
5 opinion of law?

6 A. That's correct.

7 Q. I just want to ask you one question, and
8 to the extent it deals with a legal concept, feel
9 free to tell me it's not something you know about.

10 Do you know the standard of proof that
11 must be met in order to establish that a director
12 failed to meet his or her fiduciary duties?

13 MR. BRAUTIGAM: Objection.

14 A. No, I do not.

15 Q. Do you know what the business judgment
16 rule is?

17 A. Yes.

18 Q. What is the business judgment rule?

19 A. Basically, the directors or officers are
20 protected if they're exercising their best business
21 judgment.

22 Q. Are there exceptions to when the
23 business judgment rule does not apply?

24 A. That I really cannot answer.

Page 93

1 the mental capacity or ability of any of these
2 directors to perform their duties?

3 A. Not directly, no.

4 Q. Have you performed any kind of a study
5 or analysis to give you a basis for opining on
6 retirement policies of companies in general?

7 A. No, I have not.

8 Q. Do you know whether or not it is usual
9 or unusual when establishing a mandatory retirement
10 policy for board members to exempt themselves or
11 not?

12 A. I do not know.

13 Q. Is the establishment of a retirement
14 policy a business judgment?

15 MR. BRAUTIGAM: Objection. Are you
16 talking about a mandatory retirement policy?

17 MR. BURKE: Yes.

18 BY MR. BURKE:

19 Q. The retirement policy you refer to here,
20 the adoption of this policy.

21 A. I would think it falls in the area of
22 business judgment.

23 Q. So this would be a protected decision by
24 the OHSL board?

24 (Pages 90 to 93)

Page 94

Page 96

1 MR. BRAUTIGAM: Objection.
 2 A. Establishment of the policy would be,
 3 yes.
 4 Q. Okay.
 5 A. But I'm not sure that I'm on firm legal
 6 ground saying that.
 7 Q. That's not something you know about one
 8 way or the other?
 9 A. Not legally, no.
 10 Q. The next sentence in that section, "This
 11 action..." -- I assume we're still talking about
 12 the retirement policy -- "...deprived the
 13 shareholders of the type of leadership the board
 14 itself recognized as being needed." What's the
 15 basis of that?
 16 A. I'm talking about the exemption, not the
 17 policy; exempting themselves from the policy. If
 18 you read on there, I cite instances where I think
 19 you can see that the leadership they needed wasn't
 20 there.
 21 Particularly the idea of bringing the
 22 computer system up to date was one of the primary
 23 pieces -- it was very clear from the testimony of
 24 Brinker, in particular, he did not understand what

1 A. No, I have not read any of the counsel
 2 depositions.
 3 Q. Other than Mr. Herron, are you aware of
 4 anything else that substantiates the view that
 5 Mr. Brinker was not fulfilling his duties as
 6 chairman of the board?
 7 A. Well, as I decided, the performance of
 8 the board in dealing with this computer issue.
 9 Q. What is the duty of a board of
 10 directors; what types of things do they get
 11 involved with?
 12 MR. BRAUTIGAM: Objection.
 13 A. Basically, the board of directors is
 14 really kind of an oversight organization. Day-to-
 15 day management is in the hands of the management
 16 team. The board is supposed to set broad policy
 17 guidelines.
 18 Any major expenditures that come up are
 19 probably going to be run by the board, and I would
 20 presume that a computer system is a major
 21 expenditure. Board makes decisions about dividends
 22 being paid and other issues. It's basically broad
 23 policy guidelines.
 24 Q. As opposed to the nitty gritty details

Page 95

Page 97

1 was needed or how it worked.
 2 Q. Have you done anything to quantify or to
 3 confirm empirically that the shareholders of the
 4 OHSL Financial Corp., in fact, were deprived of
 5 leadership by the board?
 6 A. The fact that the problems arose because
 7 they didn't know what was going on, and also there
 8 is testimony by Herron that Brinker really wasn't
 9 doing the job, wasn't fulfilling his duties as
 10 chairman.
 11 Q. Do you know what the basis for
 12 Mr. Herron's conclusion was?
 13 A. He said he was not reading materials,
 14 not keeping up with things as he should have.
 15 Q. And you know that Mr. Herron is
 16 supporting the plaintiffs in this case; do you
 17 know?
 18 MR. BRAUTIGAM: Objection.
 19 A. I think he is.
 20 Q. Did any of the other directors verify
 21 the testimony by Mr. Herron?
 22 A. Not that I know of.
 23 Q. Have you ever read the depositions of
 24 counsel to OHSL, Dinsmore & Shohl?

1 of the day-to-day operations?
 2 A. That's correct.
 3 Q. Do you believe that it's appropriate for
 4 a board of directors to understand the computer
 5 technology of a savings and loan association?
 6 A. They don't have to understand the
 7 technology. They have to understand the need for
 8 the technology, how it's used, and what its
 9 importance is.
 10 Q. In terms of the details of what's
 11 involved in computer technology, the nuances of
 12 implementation, those sorts of things, you wouldn't
 13 expect any board to know that, would you?
 14 MR. BRAUTIGAM: Objection.
 15 A. I don't think I can answer that
 16 question. It depends on the particular board
 17 members involved. All the board members need to
 18 have some understanding of what is necessary -- not
 19 details, but the broad scope of it, and recognize
 20 that it needs to be implemented very effectively.
 21 Q. Have you done any study or any analysis
 22 of the nature of the computer technology of
 23 computer issues at OHSL other than reading
 24 Mr. Brinker's deposition?

25 (Pages 94 to 97)

Page 98

Page 100

1 A. Nothing in particular. I'm familiar
2 with the computer system needs of the financial
3 institution, but beyond that, no.

4 Q. You're aware of that as a result of
5 what?

6 A. I teach theory and financial
7 institutions and have done so for years, and I'm
8 aware that the computer is more or less the
9 backbone of the modern financial system as far as
10 transactions are concerned.

11 Q. And in terms of the testimony of the
12 other directors as it relates to the computer
13 technology, do you recall what they had to say on
14 that topic?

15 A. There was nothing particularly striking.

16 Q. Paragraph 22. We may have talked about
17 this in the past. The statement here says,
18 "Testimony of the depositions of some board
19 members, particularly that of the chairman of the
20 board, Mr. Brinker, leaves the impression that the
21 board thought of shareholders almost as an
22 afterthought." Is that the subject that we talked
23 about earlier?

24 A. More or less, yes.

Page 99

Page 101

1 Q. What other board members did you review
2 to talk about this?

3 A. That was the primary one that I looked
4 at since he was the chairman of the board. I
5 really can't recall specifics. It was just a tone
6 that I picked up that the board members saw
7 themselves almost as a club.

8 Q. So this is not based upon specific
9 testimony as much as it's based upon the tone you
10 picked up?

11 A. In Brinker's case, it's based on
12 specific testimonies; and for the other directors,
13 it's more of a tone.

14 Q. Have you ever before opined in a court
15 case based upon the tone of testimony?

16 A. I think I may have actually, yes.

17 Q. Do you recall specifically when that
18 was?

19 A. The bank case with the fiduciary
20 responsibility issue. One of the things I had to
21 do was examine documents, see what the two sides
22 were seeing, and interpret them.

23 MR. BURKE: Let me take five seconds.
24 (A brief break was taken.)

1 BY MR. BURKE:

2 Q. Paragraph 23. In this case, you refer
3 to the, quote, apparent failure to have explored
4 other strategic alternatives such as remaining
5 independent, etc. We've talked about your basis
6 for that --

7 A. Yes.

8 Q. -- previously, have we not?

9 A. We did.

10 Q. Is this based upon anything other than
11 what you've talked about already?

12 A. No.

13 Q. "Even in the merger decision itself..."
14 -- is the next sentence of paragraph 23 -- "...the
15 board seems to have been in such a hurry to
16 consummate a sale that it took the only offer on
17 the table without exploring other offers that may
18 have been forthcoming in the future."

19 What is the basis for your conclusion
20 that there may have been other offers forthcoming
21 in the future?

22 A. That it was a pretty bad time to be
23 trying to do a merger and acquisition in this
24 particular period because of the Y2K problems

1 coming up. No one really knew what was going to
2 happen. A lot of organizations were really focused
3 internally on how to deal with Y2K and probably
4 would not have been willing to consider taking on
5 somebody new. I think once that was resolved,
6 there was a great chance there would be more
7 interest in it.

8 Q. What empirical data are you basing your
9 decision that after Y2K, there would have been more
10 interest in acquiring OHSL?

11 A. I have no empirical data. That's just
12 simply my feel for what the market was at that
13 point in time; what the level of uncertainty was.
14 And the resolution of uncertainty certainly should
15 have increased interest on the part of some
16 parties.

17 Q. You don't have any specific parties that
18 you knew would have been or would not have been
19 interested in OHSL either in 1999 or thereafter?

20 A. Not specific parties, no.

21 Q. Are you aware that people tried to
22 interest other banks and financial institutions in
23 OHSL?

24 A. I assume they did, yes.

26 (Pages 98 to 101)

Page 102

Page 104

1 Q. But you don't know the specifics of
2 that?
3 A. I do not.
4 Q. What is the basis for your statement
5 that the board was, quote, in such a hurry to
6 consummate a sale?
7 A. That is my opinion based on everything
8 I've read; that they wanted to get this over and
9 done with. They wanted to finish the sale. They
10 didn't want to wait on additional offers. They
11 wanted to finish it up.
12 Q. If I asked you this, I apologize. Do
13 you know what the performance of the OHSL stock
14 price had been in the years prior to 1999 or in
15 1997?
16 MR. BRAUTIGAM: Objection.
17 A. I really can't tell you that exactly.
18 Q. Have you evaluated from a financial
19 point of view the fairness of the Provident offer
20 to OHSL?
21 A. No. I was not asked to do that, so I
22 didn't do that.
23 Q. That's not part of your testimony?
24 A. Not part of my testimony.

1 A. I understand there is such a situation,
2 but I think this was significant enough, if they
3 really understood it, it would have stayed with
4 them better than it did.
5 Q. What's the basis for that?
6 A. I think it's a significant event in the
7 life of the corporation and in theirs.
8 Q. You're not a memory expert?
9 A. No, I'm not a memory expert --
10 MR. BRAUTIGAM: Objection.
11 A. -- by any stretch of the imagination.
12 Q. The last sentence in paragraph 24,
13 "Approving a merger which they did not understand
14 represents a serious failure to carry out fiduciary
15 responsibility."
16 Again, that's based upon your
17 interpretation of what they understood as of the
18 time of their deposition?
19 MR. BRAUTIGAM: Objection.
20 A. Yes.
21 Q. You have no knowledge of what they did
22 or did not understand as of the time they approved
23 this merger in 1999?
24 MR. BRAUTIGAM: Objection.

Page 103

Page 105

1 Q. Paragraph 24. You state, "Given
2 testimony by individual directors..." -- and you
3 refer to a couple of them, Mr. Zoellner and
4 Mr. Brinker -- "...there is serious doubt whether
5 the members of the board of directors actually
6 understood the terms of the merger." What's the
7 basis for that?
8 A. There seemed to be confusion about
9 exchange ratios, confusion about what happened
10 under certain circumstances, pretty vague.
11 Q. And that was confusion, at least
12 according to the citations here, in 2001 and 2000?
13 A. That's correct.
14 Q. Do you have any basis for opining that
15 these directors, in fact, did not understand or
16 were confused about the terms of this merger in
17 1999 when they were immediately before them?
18 A. Nothing other than the testimony that I
19 saw.
20 Q. You are familiar with the circumstance
21 where someone may understand something when it is
22 immediately before them but may forget those
23 details subsequently?
24 MR. BRAUTIGAM: Objection.

1 A. Only by inference.
2 Q. Paragraph 25 on page 6. You talk about
3 the board, quote, withheld material information
4 from the shareholders and misrepresented the vote
5 of the board in an apparent effort to ensure that
6 the merger would succeed.
7 What's the basis for your statement that
8 this was a, quote, apparent effort to ensure the
9 merger would succeed?
10 A. Well, it's the only reason I can think
11 of that they would have misrepresented it.
12 Q. Did you ever see any firsthand evidence
13 of any effort to do anything to make the merger
14 succeed? Any documents talking about that they
15 were going to do this, any testimony, that sort of
16 thing?
17 MR. BRAUTIGAM: Objection.
18 A. No, not at all.
19 Q. This is, again, an inference you're
20 drawing?
21 A. This is an inference I'm drawing.
22 Q. The next sentence on page 7, which is
23 still part of paragraph 25, talks about a
24 definition of material information. Do you see

27 (Pages 102 to 105)

Page 106

Page 108

1 that?

2 A. Yes.

3 Q. Where did you get that as the source of
4 that?

5 A. I assume it's my own.

6 Q. In paragraph 25, you have several
7 subsections. Do you see those?

8 A. Yes, I do.

9 Q. Paragraph A, "The decision to explore
10 the merger was a narrow victory for those who were
11 in favor, four to three." What's the source of
12 that?

13 A. Board minutes, amended complaint.

14 Q. And have you done anything to
15 substantiate any kind of study or analysis or
16 reliance on treatises or research whether the
17 disclosure of this four to three vote, as you're
18 referring to here, would have changed the board --
19 the vote of the shareholders?

20 MR. BRAUTIGAM: Objection.

21 A. Again, it's an inference. And in
22 looking at the Hewlett Packard case, what happened
23 there when it came out that particular directors
24 were opposed to the proposed transaction; that the

1 Q. They did not go along with what
2 Mr. Hewlett communicated as his opposition?

3 MR. BRAUTIGAM: Objection.

4 A. But they knew about it, which I think
5 was important in reaching the decision.

6 Q. Did Mr. Hewlett's position change the
7 terms of the deal at all?

8 A. I don't recall in enough detail to
9 answer that.

10 Q. My original question was, I think, other
11 than reading about the Hewlett Packard situation in
12 the general business press, do you have any study,
13 analysis, any empirical data to indicate that had
14 this vote that you talk about here been disclosed,
15 the outcome of the shareholder vote would have been
16 different?

17 MR. BRAUTIGAM: Objection.

18 A. No, other than my own basic experience
19 that information can change decisions.

20 Q. Again, that's one of your inferences
21 based upon your personal experience?

22 A. Personal experience and observation.

23 Q. Paragraph B, "The board failed to
24 disclose that the CEO, Mr. Hanauer, who was always

Page 107

Page 109

1 marketplace does want information, shareholders
2 want information.

3 Q. Have you personally studied the Hewlett
4 Packard situation?

5 A. I read about it. That's the extent of
6 it.

7 Q. You read about it in --

8 A. General business press.

9 Q. And you read about it in Candice
10 Preston's expert report?

11 A. May have read about it there, but also
12 read about it in Business Week at the time it was
13 going on; Wall Street Journal.

14 Q. Did the position of Mr. Hewlett change
15 the shareholder vote?

16 MR. BRAUTIGAM: Objection.

17 A. I really can't say that it did, but it
18 certainly stirred up a lot of interest in what's
19 going on here and why, which I think is really what
20 information is for, just to make people consider
21 what's going on.

22 Q. The shareholders still approved the
23 Compaq-Hewlett Packard merger, did they not?

24 A. I believe they did.

1 opposed to the merger, that he abstained on the
2 vote to pursue it, and that he changed his vote
3 only after being promised a change of control
4 contract..." Do you see that?

5 A. Yes, I do.

6 Q. What's your basis that Mr. Hanauer
7 changed his vote only after being promised a change
8 of control contract?

9 A. I guess basically that he did change his
10 vote after he got the change of control contract.

11 Q. Did Mr. Hanauer ever testify that was
12 the reason?

13 MR. BRAUTIGAM: Objection.

14 A. That, I don't recall.

15 Q. Do you recall Mr. Hanauer testified that
16 that was not involved in his decision?

17 A. I don't recall that.

18 Q. Below that, you've got a parenthetical
19 where you talk about Mr. Hanauer's own lawyer.
20 That's the article supposedly referring to me that
21 we talked about earlier, correct?

22 A. That's correct.

23 Q. I'm reading a little further down in
24 that same Section B. "Mr. Hanauer as CEO was the

28 (Pages 106 to 109)

Page 110

1 board member most familiar with the operations and
 2 status of OHSL." What is the basis for that?
 3 A. He is the chief executive officer. He's
 4 the guy who runs the company on a day-to-day basis.
 5 He should know more about it than anything else.
 6 Q. That's based upon your general
 7 understanding of the role of the CEO?
 8 A. Yes.
 9 Q. Is that based on any facts or analysis
 10 specific to Mr. Hanauer?
 11 A. No.
 12 Q. You indicate that Mr. Hanauer voted his
 13 personal shares against the merger?
 14 A. That's correct.
 15 Q. Do you know when he decided to do that?
 16 A. No, I do not.
 17 Q. You indicate that at some point in time,
 18 Mr. Hanauer talked about the merger not being in
 19 the shareholder's best interest. Do you recall
 20 that?
 21 A. (No response.)
 22 Q. Or do you not recall that?
 23 A. I believe he was opposed to it. He
 24 thought they should stay independent. My belief is

Page 111

1 he was basing that on his perception of what was in
 2 the best interest of the shareholders.
 3 Q. But your conclusion is that he was
 4 opposed to the merger because he wanted to remain
 5 independent; that's what you're opining on?
 6 A. He would think that was in the best
 7 interest of the shareholders, yes.
 8 Q. Did Mr. Hanauer, to your knowledge, ever
 9 tell any of the other shareholders -- any of the
 10 other directors or his counsel how he intended to
 11 vote his personal shares?
 12 A. I have no knowledge of what he did in
 13 that vein.
 14 Q. Did you read Mr. Hanauer's testimony as
 15 to whether he felt that that was a fact that should
 16 have been disclosed to anybody, how he intended to
 17 vote his personal shares?
 18 MR. BRAUTIGAM: Objection.
 19 A. I don't recall that.
 20 Q. Do you recall whether or not Mr. Hanauer
 21 ever advised counsel for OHSL about his plans, if
 22 any, to vote his personal shares?
 23 A. No, I do not.
 24 Q. Do you know when he decided or when he

Page 112

1 did vote his personal shares?
 2 A. When he did vote his personal shares?
 3 Q. Yes, sir.
 4 A. During the voting period.
 5 Q. But you don't know specifically?
 6 A. I don't know the exact date.
 7 Q. Do you know whether he decided to vote
 8 his personal shares in any way prior to the time
 9 the proxy statement was prepared and transmitted to
 10 OHSL shareholders?
 11 MR. BRAUTIGAM: Objection.
 12 A. I have no way of knowing that. I can
 13 make an inference. If he were opposed to it, he
 14 probably decided early on he was going to. That's
 15 only an inference.
 16 Q. You don't know that from any specific
 17 facts?
 18 A. No, I don't.
 19 Q. Paragraph C. You talk here about
 20 Mr. Herron's resignation. You do state that "Even
 21 though his letter of resignation did not state
 22 opposition to the merger as the basis of his
 23 resignation..." -- do you see that portion of the
 24 sentence?

Page 113

1 A. Yes, I do.
 2 Q. So you have seen the letter?
 3 A. I've seen the letter and I've also seen
 4 his affidavit and testimony where he says that as
 5 well.
 6 Q. Are you aware of the legal guidelines
 7 for when or under what circumstances a director's
 8 resignation needs to be disclosed?
 9 A. No, I am not.
 10 MR. BRAUTIGAM: Objection.
 11 Q. You state that each of the remaining
 12 directors was informed that Mr. Herron was
 13 resigning in protest. Do you see that?
 14 A. Yes.
 15 Q. What's the basis for that?
 16 A. Mr. Herron's testimony and affidavit.
 17 Q. Did you see the portion of Mr. Herron's
 18 testimony where initially he denied that he
 19 resigned in protest?
 20 MR. BRAUTIGAM: Objection.
 21 A. I don't recall seeing that, no.
 22 Q. Do you recall that he changed his
 23 testimony the second time around in response to
 24 questioning by Mr. Brautigam?

29 (Pages 110 to 113)

Page 114

1 MR. BRAUTIGAM: Objection.
 2 A. Again, I don't recall all the details.
 3 Q. What do the other directors say about
 4 whether or not Mr. Herron told them he was
 5 resigning in protest?
 6 MR. BRAUTIGAM: Objection.
 7 A. I don't recall.
 8 Q. Do you recall testimony from the other
 9 directors saying that Herron never told them
 10 anything like that?
 11 MR. BRAUTIGAM: Objection. That's a
 12 blatant mischaracterization.
 13 A. I do not recall such.
 14 Q. Paragraph D referred to here the fact
 15 that "the composition of the board of directors had
 16 changed." Tell me what you mean by that?
 17 A. As far as the shareholders were
 18 concerned, it was a different board voting than the
 19 one that they had last been informed there was
 20 prior to these proxy materials being prepared.
 21 There's no effort to tell the shareholders that
 22 they've gone from eight directors to seven
 23 directors.
 24 Q. I'm going to show you a document that

Page 116

1 set forth a listing of stock ownership by each
 2 present director of OHSL?
 3 A. Yes.
 4 Q. And you know that Mr. Herron was not
 5 listed on this list?
 6 A. Yes.
 7 Q. And you believe that that does not
 8 disclose to people the fact that Mr. Herron is no
 9 longer a director?
 10 A. It's certainly not affirmative
 11 disclosure.
 12 Q. But it certainly does not list him as a
 13 present director as of July 31, 1999?
 14 A. No, it does not, but the document
 15 nowhere discloses he is no longer a director. And
 16 I think for the typical shareholder reading that,
 17 they're not going to catch that.
 18 Q. And what is your basis for making
 19 conclusions as to what the typical shareholder will
 20 or will not catch; what is your --
 21 A. 35 years of dealing with students who
 22 were probably above intelligence -- average
 23 intelligence above the shareholders, and they don't
 24 catch details like that. People don't read

Page 115

1 you looked at, Plaintiff's Exhibit 9, which I
 2 believe are the notes to the proxy statement.
 3 MR. BRAUTIGAM: Can we identify that
 4 more accurately for the record? It's the
 5 proxy materials in draft form with Hanauer's
 6 annotations.
 7 MR. BURKE: I've got a better idea.
 8 (Off-the-record interruption.)
 9 BY MR. BURKE:
 10 Q. When you reviewed the proxy statement,
 11 or at least the copy with Mr. Hanauer's annotations
 12 on it, did you review the page that I'm referring
 13 you to now, which looks like it's page 63?
 14 A. Yes.
 15 Q. And you know that the document states,
 16 quote, The following table sets forth as of
 17 July 31, 1999, information with respect to the
 18 beneficial ownership of OHSL common stock by each
 19 person known by OHSL to be the beneficial owner of
 20 more than 5 percent of the common stock by each
 21 present director of OHSL and by certain executive
 22 officers of OHSL?
 23 A. Yes.
 24 Q. And you understood that this table did

Page 117

1 documents that closely.
 2 Q. So your basis for what a reasonable
 3 shareholder would or would not catch in this is
 4 based upon your experience with your students?
 5 A. Yes.
 6 (Attorney Hust left the deposition.)
 7 (Off-the-record discussion.)
 8 BY MR. BURKE:
 9 Q. Paragraph E on page 7. "The board
 10 misrepresented the vote of the remaining seven
 11 board members as being unanimous when it was not.
 12 One board member was absent, and the chairman of
 13 the board did not vote, even though he had voted
 14 for the merger on July 22nd, 1999."
 15 Have you read the testimony where
 16 Mr. McKiernan and Mr. Brinker clearly indicated
 17 they were in favor of this merger?
 18 MR. BRAUTIGAM: Objection.
 19 A. I may have, but they didn't vote for it;
 20 and I'm not going on the basis of the vote.
 21 Q. Do you recall reading the portion of
 22 Mr. Brinker's testimony where he testified about
 23 what the practice of the chairman of the board at
 24 OHSL was as it related to voting?

30 (Pages 114 to 117)

Page 118

1 A. Yes.

2 Q. And you know that he indicated that his
3 general practice was that if there was a tie to be
4 broken, he'd vote; if there wasn't, he would not?

5 A. There seems to be a previous vote where
6 he did vote, so it's not a rule that's followed.

7 Q. Do you have any firsthand knowledge
8 about whether or not that was or was not a practice
9 at OHSL?

10 A. Obviously, if it was a practice, he
11 violated it, so it wasn't a practice that was
12 followed strictly.

13 Q. Do you know whether or not that practice
14 is evidenced by or supported by Robert's Rules of
15 Order?

16 MR. BRAUTIGAM: Objection.

17 A. I don't have enough familiarity with
18 Robert's Rules to answer that question.

19 Q. You know that Mr. McKiernan was very
20 much in favor of the transaction?

21 MR. BRAUTIGAM: Objection.

22 A. Appears to have been, yes.

23 Q. Paragraph 26, second sentence. At the
24 end of that page, "they," which I believe is the

Page 120

1 as opposed to the OHSL board?

2 A. No, I don't, no.

3 Q. Later on paragraph 8, I think in the
4 third to last sentence, you state, "In my opinion,
5 the proxy materials contained material
6 misstatements and material omissions." Are those
7 the --

8 MR. BRAUTIGAM: Where are you? You said
9 paragraph 8.

10 MR. BURKE: Page 8, paragraph 26, third
11 to the last sentence.

12 (Off-the-record discussion.)

13 BY MR. BURKE:

14 Q. In paragraph 26, there's a statement "In
15 my opinion, the proxy materials contain material
16 misstatements and material omissions," correct?

17 A. Correct.

18 Q. Is that what we have talked about
19 already on the previous page 7?

20 A. That's correct.

21 Q. And nothing other than those various
22 items?

23 A. No.

24 Q. Paragraph 27. "In addition to the board

Page 119

1 OHSL board of directors, "relied solely on the
2 attorneys involved to prepare the proxy materials
3 which contained both the omissions listed above and
4 some errors such as listing..." --

5 A. Should be two.

6 Q. -- "...two different amounts for the
7 value of the Provident shares..."

8 What is your basis for stating that the
9 board relied solely on the attorneys involved to
10 prepare the proxy materials?

11 A. Basically, the testimony of the various
12 directors saying the lawyers did it, the bankers
13 did it. They said that's who they relied on.

14 Q. Have you seen the handwritten factual
15 summaries by the members of the ad hoc committee --

16 A. No, I have not.

17 Q. -- that were given to Mr. Roe to provide
18 the factual background for the transaction?

19 A. I have seen no handwritten summaries.

20 Q. Have you seen copies of the proxies that
21 were commented upon by OHSL management?

22 A. No, I have not.

23 Q. Do you understand the extent to which
24 OHSL management was involved in the proxy materials

Page 121

1 as a whole failing to carry out its fiduciary
2 responsibilities, individual directors also failed
3 to carry out their individual fiduciary
4 responsibilities."

5 Tell me what the difference is, for
6 purposes of your opinion, between the board as a
7 whole carrying out its fiduciary duty and
8 individual directors carrying out their fiduciary
9 responsibilities.

10 A. Basically, what the board as a whole --
11 it goes beyond what these individuals -- these
12 individuals did certain things. The board as a
13 whole did certain things.

14 And the board's primary failure was to
15 disclose the information. And in the case of the
16 two directors, I'm saying that they failed to
17 exercise their responsibility as directors to voice
18 their opposition and make it known, essentially.
19 There's more than that to it, but that's the
20 nutshell.

21 Q. Are you aware of any basis in academic
22 literature for the concept of fiduciary duty as a
23 whole as opposed to individual fiduciary duties?

24 A. I can't say that I am.

31 (Pages 118 to 121)

Page 122

1 Q. You talk about Mr. Hanauer, and you
2 state in the first line, "Mr. Kenneth Hanauer
3 believed that the merger was not in the best
4 interest of the shareholders." What's the basis
5 for that?

6 A. His desire to keep the association
7 independent -- or, excuse me -- no longer an
8 association. Sorry about that. To keep the
9 company independent.

10 Q. But what is the basis for your statement
11 that he believed the merger was not in the best
12 interest of the shareholder?

13 A. That he wanted to keep it independent.

14 Q. Have you done any analysis as to whether
15 or not it would have been better for OHSL to have
16 remained independent as opposed to merging with --

17 A. No, I did not.

18 Q. So whether or not he was accurate,
19 correct, or incorrect in terms of believing that it
20 was better to remain independent, you don't know
21 one way or --

22 A. I have no opinion.

23 Q. In paragraph B, you talk about
24 Mr. Herron?

Page 124

1 he never called anybody and demanded that that be
2 rectified or corrected?

3 A. I believe that's correct.

4 Q. Did you see the portion of Mr. Herron's
5 testimony where he indicated that he never told
6 counsel for OHSL of his supposed protest or
7 insisted that any kind of a protest be registered
8 in the board minutes?

9 A. I'm not sure on that one.

10 Q. Paragraph 28. You indicate that
11 "certain members of the board seem to have been
12 determined to sell OHSL Financial Corporation
13 whatever the obstacle..." Who were you talking
14 about there?

15 A. Members of the ad hoc committee, and
16 Mr. Brinker as well seems to have been very
17 determined to do this.

18 Q. And the ad hoc committee members we
19 talked about earlier, correct?

20 A. Yes.

21 Q. And you did not review either Mr. Hucke
22 or Mr. McKiernan's deposition in detail?

23 A. Not in detail, no.

24 Q. So what they felt on that topic is not

Page 123

1 A. Yes.

2 Q. And you do conclude that Mr. Herron
3 failed to carry out his fiduciary responsibilities?

4 A. Yes, I do.

5 Q. What's the basis for that?

6 A. I believe he had a responsibility to
7 disclose to the shareholders why he was resigning
8 if he was resigning in protest as he says he was.

9 Q. How would he have done that?

10 A. One way to do it would have been in the
11 letter to the board.

12 Q. And he did not disclose any such protest
13 in that letter?

14 A. Not in the letter, no.

15 Q. Do you know whether or not the decision
16 of OHSL and its counsel to not disclose
17 Mr. Herron's resignation was based on the content
18 of that letter?

19 A. I do not know that.

20 MR. BRAUTIGAM: Objection.

21 Q. Did you see Mr. Herron's testimony where
22 he indicated that even after he saw the proxy
23 statement and saw that his resignation was not
24 disclosed as he thought it should have been, that

Page 125

1 something that you have studied in any depth?

2 A. Not in great depth, no.

3 Q. Have you ever read the testimony or read
4 anything in the testimony of any of the directors,
5 such as Mr. Hucke, Mr. Brinker, Mr. McKiernan,
6 Mr. Tenover, the others -- other than Mr. Herron
7 and Mr. Hanauer that you talked about -- in which
8 they state that they did not believe that this
9 merger was not in the best interest of the
10 shareholders?

11 A. No, I have not.

12 Q. In fact, every one of them stated that,
13 in their view, it was in the best interest of the
14 shareholders?

15 A. I believe that's correct.

16 Q. Is there a reason why you chose not to
17 believe that that was truly what they felt?

18 MR. BRAUTIGAM: Objection.

19 A. No, and I don't think I've testified to
20 that effect either.

21 Q. Have you studied the OHSL-Provident
22 merger in sufficient detail to understand that
23 there were clear reasons why a merger with
24 Provident was in the best interest of OHSL

32 (Pages 122 to 125)

Page 126

1 shareholders?
 2 MR. BRAUTIGAM: Objection.
 3 A. I have not studied that aspect of it.
 4 That's not my charge.
 5 Q. That's not part of your opinion?
 6 A. No.
 7 Q. Paragraph 29. Off the record.
 8 (A brief break was taken.)
 9 BY MR. BURKE:
 10 Q. Paragraph 29. In this sentence, you
 11 refer to "hidden material information." Do you see
 12 that phrase?
 13 A. Yes.
 14 Q. Again, that is the various pieces of
 15 information that are identified on paragraph 7?
 16 A. Correct.
 17 Q. I said paragraph 7. I meant page 7.
 18 A. Page 7, whatever paragraph it is.
 19 Q. Paragraph 25.
 20 A. Okay.
 21 Q. You state that you "believe that had the
 22 material information been available in and
 23 misrepresentation of the board's vote removed from
 24 the proxy material, the outcome of the shareholder

Page 128

1 A. I honestly don't recall.
 2 Q. Other than what Mr. Thiemann said, have
 3 you done any studies, analysis, any other kind of
 4 research or surveys to substantiate your conclusion
 5 that had certain material been disclosed, the
 6 outcome of the shareholder vote would have been
 7 different?
 8 A. Only thing I can say there is the
 9 closeness of the vote made me believe that
 10 additional information probably would have defeated
 11 it.
 12 Q. But have you done anything else --
 13 A. Have I done any empirical study? No, I
 14 have not. I have not polled the shareholders or
 15 anything like that.
 16 Q. Have you, in your academic experience,
 17 seen any studies or come across any studies where
 18 the authors in a scientific manner have calculated
 19 or attempted to analyze impacts on shareholder
 20 votes or what would change shareholder votes?
 21 A. No, I have not.
 22 Q. And no such study is the basis for your
 23 report?
 24 A. No.

Page 127

1 vote would have been different."
 2 What is the basis for your statement
 3 that "the outcome of the shareholder vote would
 4 have been different"?
 5 A. We already have at least one shareholder
 6 saying had he known this, it would have changed
 7 40,000 votes, and I'm sure it would have raised
 8 questions in the minds of many others.
 9 Q. You did not read the deposition of
 10 Mr. Thiemann?
 11 A. Not in detail, no. I glanced at it.
 12 Q. Were you ever made aware in the course
 13 of your work that Mr. Thiemann had a personal
 14 financial plan to sell off OHSL Financial shares?
 15 A. No, I do not know that.
 16 Q. Did you understand that he utilized the
 17 merger as the opportunity to actualize that plan?
 18 MR. BRAUTIGAM: Objection.
 19 A. I do not know anything in that vein.
 20 Q. Other than what you talked about earlier
 21 in looking at what Mr. Thiemann said, was that in
 22 his deposition or was that in an affidavit?
 23 MR. BRAUTIGAM: Objection.
 24 Q. If you know.

Page 129

1 Q. Paragraph 31. You talk about, "In
 2 summary, my conclusion is that the board of
 3 directors of the OHSL Financial Corporation failed
 4 to carry out its fiduciary responsibilities in the
 5 handling of the merger of that entity with
 6 Provident Financial Group, Incorporated."
 7 In your testimony today, have we gone
 8 over all the bases for that conclusion?
 9 MR. BRAUTIGAM: Objection.
 10 A. To the best of my recollection at this
 11 point.
 12 Q. That's fine. Were there any articles in
 13 the field of economics of finance that you relied
 14 upon or utilized in the purpose or in connection
 15 with preparing your expert report?
 16 A. Nothing directly.
 17 MR. BURKE: I believe, Mr. Walker, that
 18 we are concluded. I appreciate your time and
 19 your efforts today. Thank you so much. If
 20 you come back, what time are you coming back?
 21 MR. BRAUTIGAM: 1:30.
 22 MR. BURKE: I probably will not be here.
 23 (A break was taken for lunch.)
 24

33 (Pages 126 to 129)

Page 130

Page 132

1 AFTERNOON SESSION
 2 (Attorney Burke not present. Jason
 3 Cohen is present.)
 4 DIRECT EXAMINATION
 5 BY MR. BRAUTIGAM:
 6 Q. Good afternoon, Dr. Walker. As you
 7 know, my name is Michael G. Brautigam, and I
 8 represent Walter Thiemann, Gary and Lisa Meier, and
 9 a putative class of OHSL shareholders.
 10 Dr. Walker, do you believe that your
 11 testimony would assist the trier of fact in
 12 understanding the role of the board of directors in
 13 a public company and your opinion that they
 14 breached their fiduciary duties?
 15 MR. COHEN: Objection, leading.
 16 A. Yes, I do.
 17 Q. Why do you believe that?
 18 A. Well, I think I can give a perspective
 19 of what a board is supposed to do, what their
 20 responsibilities are, what was expected of a board.
 21 Q. And do you believe that without your
 22 testimony, the trier of fact, in this case the
 23 jury, might find that to be confusing; in other
 24 words, they might not have an inherent knowledge of

1 A. Yes, it is.
 2 Q. Is it your opinion that GAAP prohibits
 3 the restatement of immaterially misstated
 4 financials?
 5 MR. COHEN: Same objection.
 6 A. Yes, it is.
 7 Q. Dr. Walker, let me direct your attention.
 8 to the proxy materials. Provident provided
 9 financial information on pages 6 and 7 --
 10 MR. COHEN: Can we say what exhibit this
 11 is, Mike?
 12 MR. BRAUTIGAM: This is Exhibit 9.
 13 BY MR. BRAUTIGAM:
 14 Q. Were OHSL shareholders expected to rely
 15 in part on the financial information that Provident
 16 provided in the proxy materials?
 17 MR. COHEN: Objection, foundation.
 18 A. Yes, they were.
 19 Q. Do we now know that that information was
 20 wrong?
 21 MR. COHEN: Objection, foundation.
 22 A. Yes. They were restated.
 23 Q. My next question is: How do we know
 24 that?

Page 131

Page 133

1 the role of a board and what the board's fiduciary
 2 duties are?
 3 MR. COHEN: Objection, leading.
 4 A. I believe that to be true.
 5 MR. COHEN: Foundation.
 6 Q. Dr. Walker, I also understand that you
 7 have taught intermediate accounting at the college
 8 level; is that correct?
 9 A. I taught in a training program for a
 10 bank. It was a college level course, but it wasn't
 11 actually taught within the university.
 12 Q. And you're familiar with GAAS and GAAP?
 13 A. I have a working knowledge. I don't
 14 have a detailed knowledge.
 15 Q. And you're familiar with the phrase
 16 restatement, correct?
 17 A. Yes, I am.
 18 Q. And you're familiar with the phrase
 19 materiality as accountants use the term, correct?
 20 A. Yes, I am.
 21 Q. Dr. Walker, is it your opinion that GAAP
 22 requires the restatement of materially misstated
 23 financials?
 24 MR. COHEN: Objection, leading.

1 A. There was a restatement because of an
 2 error in treatment of certain transactions.
 3 Q. Dr. Walker, you testified with respect
 4 to Gateway. Do you remember that testimony from
 5 this morning?
 6 A. Yes, I do.
 7 Q. And was the Gateway situation in some
 8 ways similar to Oak Hills, at least in the sense
 9 that it was a conversion from a mutual company to a
 10 stock company?
 11 A. Yes. It was a conversion from mutual to
 12 stock.
 13 Q. Did you draw in part upon your
 14 familiarity with Gateway in rendering your opinions
 15 here?
 16 A. Yes, I would say I did.
 17 Q. Now, Dr. Walker, I understand that you
 18 taught at what you described as a savings and loan
 19 school for a number of years?
 20 A. University of Oklahoma. When I was
 21 there, I ran a resident school for savings and loan
 22 officers. It was a program where they came in for
 23 two weeks, I can't remember whether it was two or
 24 three consecutive years, and they received a

34 (Pages 130 to 133)

Page 134

Page 136

1 certificate at the end of that program.

2 Q. What were some of the topics that were
3 taught at that savings and loan school?

4 A. That was a wide range of topics. Some
5 accounting, some financial statement analysis, some
6 aspects of lending analysis, some aspects of ways
7 to raise deposits. Just generally running the
8 savings and loan association, which at that time,
9 almost all in that part of the company were
10 mutuals.

11 Q. Dr. Walker, you testified that given
12 your other duties and responsibilities, that you
13 agreed to accept this expert assignment because you
14 felt in part that it was an interesting case?

15 A. That's correct.

16 Q. Could you please explain your answer
17 more fully.

18 A. Well, there are two parts to the answer.
19 One, once I looked at the facts, I thought they
20 were pretty interesting to see what was going on.

21 The other is just -- a general interest
22 topic right now in academics and in the business
23 world is the role and responsibility of the board
24 and how they carry that out.

1 described it as being pieces of your courses. Does
2 that refresh your recollection?

3 A. That's correct.

4 Q. Can you amplify what it means when you
5 say corporate responsibility and ethics were pieces
6 of courses that you've taught?

7 A. Well, obviously, one of the issues is
8 that we're trying to teach ethics to business
9 students. One of the places where we focus on,
10 particularly in the finance classes, is the ethical
11 responsibilities of the corporate directors to
12 represent the interest of the shareholders.

13 Q. When you say you're trying to teach
14 ethics in the business school, why are you trying
15 to do that?

16 A. Well, obviously, there has been a lot of
17 unethical behavior in business in recent years, and
18 huge amounts of publicity. And you'll find a
19 strong push among, certainly, all the accredited
20 business schools to increase the focus on ethical
21 behavior on the part of their students.

22 We've gone as far as -- even within our
23 MBA program, we now require that all students sign
24 an honor agreement that they will behave ethically

Page 135

Page 137

1 And I probably have a stronger interest
2 in that than a lot of people do because that was
3 the same Ph.D. program with Ken Lay, and my
4 daughter worked for Enron until September before
5 they went under. So I had a pretty good look at
6 what happens when things go astray.

7 Q. Why did you think that the facts were
8 particularly interesting in this case?

9 A. Well, I think the interesting aspect was
10 you had one of these transaction situations where
11 you had gone from a mutual to a stockholder-owned
12 entity. In my opinion, the board really didn't
13 make that type of transaction. They're still
14 thinking of it as their mutual association.

15 Q. Dr. Walker, you also testified with
16 respect to corporate responsibility and ethics when
17 Mr. Burke was asking the questions this morning.
18 Do you remember that testimony?

19 A. I remember the topic. I don't remember
20 exactly what was said.

21 Q. Well, among other things, you said that
22 although you had not taught a course specifically
23 in corporate responsibility or in ethics, that they
24 were covered in your courses. I think you

1 within the program; trying to really drive the idea
2 home.

3 Q. Do you make a distinction between
4 corporate responsibility and ethics?

5 A. Well, there is -- the ethics tend to be
6 more individual and corporate responsibility is
7 institutional; but in order for the corporation to
8 be responsible, you have to have ethical behavior
9 by the individuals being involved. So they're
10 closely tied.

11 Q. And you've taught both?

12 A. Talked about both in my classes.

13 Q. Dr. Walker, you're familiar with the
14 phrase fiduciary duty, correct?

15 A. Yes.

16 Q. Could you just give me a rough
17 definition of it, please?

18 A. A very rough definition of a fiduciary
19 is someone who represents the interest of another;
20 puts their well-being or benefit first in making
21 decisions.

22 Q. Can you frame your answer with respect
23 to the responsibility of a corporate board of a
24 public company?

35 (Pages 134 to 137)

Page 138

1 A. A corporate board of a public company --
2 the board as a whole, the directors individually --
3 have a responsibility to represent shareholder
4 interest.

5 Q. Now, Dr. Walker, you have an opinion
6 you've expressed in your expert report and in your
7 testimony today that the OHSL board collectively
8 and individually did not fulfill its fiduciary
9 obligations to the shareholders; is that correct?

10 MR. COHEN: Objection, leading.

11 A. That's correct.

12 Q. And is that in part because of their
13 production of the proxy materials which you have a
14 version of in front of you, Plaintiff's Exhibit 9,
15 it's also Defendant's Exhibit 1 without
16 Mr. Hanauer's connotations?

17 MR. COHEN: Objection, leading.

18 A. It's based on the proxy materials --
19 partially based on the proxy materials.

20 Q. What do you believe that the OHSL board
21 did wrong? Can you please summarize that?

22 A. Well, in terms of content of the proxy
23 material, it didn't disclose what I consider to be
24 material information; information that shareholders

Page 140

1 common sense in forming your conclusions?

2 A. Obviously not.

3 Q. And you did not do so in this case,
4 correct?

5 A. No.

6 Q. You're not holding yourself out as an
7 expert in plain language, and you're not claiming
8 to have advised the SEC with respect to plain
9 language in proxy materials and other public
10 disclosures as Dr. Lutz has, correct?

11 A. That's correct.

12 Q. But you believe that, based on
13 everything you've testified to today, you're still
14 able to form an opinion that unanimously, as it's
15 used in the proxy materials and specifically on the
16 first page of the proxy materials, is used with the
17 intention of misleading the OHSL shareholders; is
18 that correct?

19 MR. COHEN: Objection, leading,
20 foundation.

21 A. I would have to say yes.

22 Q. Dr. Walker, let me direct your attention
23 to this sentence, which I will read into the
24 record: "Your board of directors unanimously

Page 139

1 should have had in order to make a decision.

2 It did not disclose that the decision
3 had been discussed with negative ramifications,
4 that some of the directors initially opposed it.

5 The final vote was presented as
6 unanimous when it really was not. You had those
7 voting for it, but you had other directors who did
8 not vote. You also had a director who had resigned
9 who was in opposition to the merger, and that
10 resignation really was not disclosed.

11 Q. Dr. Walker, you're familiar with the
12 word unanimously as it's used in common usage,
13 correct?

14 A. Correct.

15 Q. And do you believe that the use of the
16 word unanimously to refer both to the OHSL
17 directors' vote and their supposed unanimous belief
18 that the merger was in the best interest of OHSL
19 shareholders is incorrect?

20 A. Yes, I do.

21 MR. COHEN: Objection, leading.

22 Q. Dr. Walker, when you agreed to accept
23 this expert assignment or any other expert
24 assignment, is there a requirement that you suspend

Page 141

1 approved the acquisition and believes that it is in
2 the best interest of OHSL stockholders." Do you
3 see that?

4 A. Yes, I do.

5 Q. Do you believe that that sentence
6 embraces two different concepts?

7 MR. COHEN: Objection, leading.

8 A. In other words, you're really asking me
9 what unanimously modified. I think it modifies
10 both approved and believes.

11 Q. Do you believe that there's a
12 distinction between a transaction being fair and a
13 transaction being in the best interest of
14 shareholders?

15 A. Yeah. There's circumstances where it
16 could very definitely be a difference.

17 Q. Can you explain your answer, please.

18 A. Well, fair simply means it is a
19 transaction where both parties are getting
20 approaching what is market value in this particular
21 case.

22 And in the best interest, it would be
23 that it also -- that that holds in the future; in
24 other words, it might be in the best interest of

36 (Pages 138 to 141)

Page 142

1 the shareholders of Oak Hills to vote to remain
2 independent because of the potential increase in
3 the value even though it is a fair transaction.

4 Q. Now, Dr. Walker, we talked a little bit
5 previously about the Cincinnati Business Courier
6 article, which has been previously marked as
7 Plaintiff's Exhibit 1.

8 Mr. Burke is quoted, without quotation
9 marks, as saying: "Burke's response, Hanauer
10 opposed the Provident takeover because he wanted
11 Oak Hills to remain independent," period, "but he
12 also believed the transaction was fair to
13 shareholders." You've seen that, correct?

14 A. Yes, I have.

15 Q. Does that embrace the two different
16 concepts that we were talking about?

17 A. Yes, I think so.

18 Q. Do you believe that Mr. Hanauer's
19 opposition to the merger should have been disclosed
20 to the shareholders even if he believed the
21 transaction was fair?

22 MR. COHEN: Objection, speculation,
23 foundation, leading.

24 A. Yes, I do believe that because I think

Page 144

1 attention to the July 22nd, 1999, OHSL shareholder
2 vote. Let me refresh your recollection with
3 respect to some of the things that happened at that
4 vote.

5 (A), Mr. Hanauer abstained; (B),
6 Mr. Herron voted against continued negotiations
7 with Provident; and (C), Mr. Brinker affirmatively
8 voted in favor of the merger. Are you with me?

9 A. Yes.

10 Q. Is that consistent with your
11 recollection of the events?

12 A. Yes, it is.

13 Q. Dr. Walker, do you believe that at this
14 July 22nd, 1999, OHSL special meeting of the board
15 that Mr. Hanauer violated his fiduciary duties to
16 the shareholders by abstaining?

17 MR. COHEN: Objection, foundation,
18 leading.

19 A. If, as he indicated himself, he was
20 opposed to the transaction, yes, he did. He has a
21 duty to vote his belief on the effect on the
22 shareholders.

23 Q. Dr. Walker, you've reviewed the
24 consolidated and amended complaint, correct?

Page 143

1 the shareholders are entitled to know what the
2 views of a director are. And I think it's
3 particularly pertinent in the case of Mr. Hanauer
4 since he was the CEO.

5 He was the only officer on the board.
6 He was the person most familiar with the operation
7 of OHSL. He was probably the person that the
8 typical shareholder depositor looked to for
9 information and leadership.

10 Q. Dr. Walker, your testimony with respect
11 to that question sounds very similar to
12 Ms. Preston's testimony, which you've reviewed,
13 correct? Actually, her report.

14 A. Her report, yes.

15 Q. Do you disagree with any of
16 Ms. Preston's conclusions?

17 A. Not that I can think of.

18 Q. You also reviewed Dr. Lutz' report on
19 plain English, correct?

20 A. Correct.

21 Q. Do you disagree with any of Dr. Lutz'
22 conclusions?

23 A. No.

24 Q. Dr. Walker, I'd like to direct your

Page 145

1 A. Correct.

2 Q. Do you remember seeing testimony very
3 similar to what you've just said from KMK attorneys
4 Mark Weiss and Tim Matthews in substance that if
5 Mr. Hanauer did not believe the merger was in the
6 best interest of OHSL shareholders, that he had an
7 affirmative fiduciary duty to vote against the
8 merger?

9 A. Yes, I do recall that, and I completely
10 agree with it.

11 Q. So Dr. Walker, as the plaintiff's
12 expert, you're actually agreeing with at least two
13 KMK transactional attorneys; is that right?

14 MR. COHEN: Objection, leading.

15 A. I would assume so.

16 Q. Dr. Walker, is there any hint of dissent
17 in the proxy materials?

18 A. Proxy materials present everything as
19 unanimous.

20 Q. Dr. Walker, did you ever see in
21 Mr. Hanauer's testimony that at one time, at least,
22 he referred to the OHSL board as, quote, old,
23 tired, and scared?

24 A. Yes, I did.

37 (Pages 142 to 145)

Page 146

1 Q. In general, do you agree with
2 Mr. Hanauer's observation?

3 MR. COHEN: Objection, foundation.

4 A. I don't know whether I can comment on
5 the scared part, but it does look like the board
6 was old and tired and was not really doing what
7 they should do as a board to review transactions to
8 keep up with what was going on, particularly with
9 regard to this transaction, because I don't think
10 they really understood the merger. And it's pretty
11 clear from testimony that they did not understand
12 that they were responsible for the content of the
13 proxy materials.

14 Q. Do you believe that both those things --
15 understanding the merger, at least in broad
16 strokes, and understanding who was responsible for
17 the proxy materials -- are essential to fulfilling
18 the fiduciary duties of the board?

19 A. Yes, I believe they are.

20 Q. That's pretty basic stuff, correct?

21 A. I think it's very basic. I think any
22 director has an obligation to understand the
23 business, understand any transactions in which
24 they're involved. How can they make a decision

Page 147

1 they don't understand?

2 Q. Dr. Walker, you testified this morning
3 with respect to the business judgment rule. Do you
4 remember that subject coming up generally?

5 A. Yes, I do.

6 Q. Dr. Walker, have you been retained or
7 are you offering an opinion with respect to whether
8 or not this is a good or a bad transaction for the
9 OHSL shareholders?

10 A. I have not been asked to comment on
11 that.

12 Q. Please explain the difference to the
13 trier of fact as to the difference between it being
14 a good transaction or a bad transaction and what
15 your opinion is really on.

16 A. My opinion is, regardless of whether it
17 was a fair transaction or not, the board's conduct
18 violated their fiduciary responsibilities and that
19 they did not disclose information that a
20 shareholder would like to have had making a
21 decision.

22 They did not disclose the opposition;
23 they did not disclose resignation of the director;
24 they did not disclose -- that it really was not

Page 148

1 unanimous.

2 Q. And do you believe that was required of
3 the board to fulfill their fiduciary duties?

4 A. Yes, I do.

5 Q. Why?

6 A. At the interest of the shareholders, I
7 think -- and in putting things to a shareholder
8 vote, I think you have to provide the shareholders
9 with accurate information.

10 Q. Is that view generally accepted in the
11 academic business community?

12 A. Certainly in the academic business
13 community.

14 Q. Is that view generally accepted among
15 corporate boards?

16 A. I would say in general, certainly to the
17 lip service; and I think more and more, we're
18 seeing that direction being taken by corporate
19 boards. They're making more efforts to be open,
20 transparent, and convey the information necessary,
21 if nothing else because of changes in the law.

22 Q. Now, Dr. Walker, Mr. Burke often asked
23 you this morning with respect to various topics if
24 you had conducted a study or any analysis or

Page 149

1 research treatises, conducted research, or if you
2 had any empirical data, among other things, with
3 respect to some of the conclusions you've reached
4 such as your belief that the OHSL board of
5 directors violated their fiduciary duties. Do you
6 remember that coming up?

7 A. Yes, I do.

8 Q. And generally speaking, you said that
9 you didn't do those things. You didn't conduct
10 studies; you didn't do any quantitative analysis;
11 you didn't research treatises; you didn't perform
12 much research; and you don't have any empirical
13 data. Do you remember that testimony?

14 A. Yes, I do.

15 Q. Why not?

16 A. Well, basically, what I'm looking at
17 here in some ways is just common sense; and others,
18 it reflects things that I have studied, researched
19 for 35 years.

20 I'm relying on personal experience. I'm
21 relying on broad reading in the area of business.
22 I continually read Wall Street Journal, Fortune,
23 Business Week. You name it, whatever comes up in
24 that area.

38 (Pages 146 to 149)

Page 150

Page 152

1 I follow the Financial Press very
2 carefully. I keep up with all the developments in
3 the academic area in which I teach, finance. And
4 these have been very hot topics in recent years.

5 Q. So Dr. Walker, is it fair to say that,
6 in addition to your role in the ivory tower, if you
7 will, you step down and read everyday business
8 publications, such as the Wall Street Journal or
9 Business Week.

10 And you've consulted with corporate
11 boards; you've attended corporate board meetings.
12 So at least from time to time, you have a foot in
13 the business world as well as in the academic
14 world; is that correct?

15 MR. COHEN: Objection, leading.

16 A. That's correct.

17 Q. Do you believe that is a good background
18 that prepares you to assist the trier of fact in
19 rendering your opinions?

20 MR. COHEN: Objection, leading

21 foundation. At this point, I am just going to
22 make a continuing objection to leading and
23 foundation, and I'm going to take off.

24 (Off-the-record discussion.)

1 Q. Dr. Walker, the merger agreement is
2 included in the proxy materials, correct?

3 A. Yes, it is.

4 Q. And that's signed by representatives of
5 OHSL and Provident, correct?

6 A. Correct.

7 Q. And the date of that signed merger
8 agreement is August 2nd, 1999, correct?

9 A. Correct.

10 Q. And the merger was announced on August
11 2nd or August 3rd, 1999, correct?

12 A. Correct.

13 Q. Under what circumstances would it be
14 appropriate for representatives of a company to
15 sign a merger agreement on August 2nd, announce it
16 to the investing public on August 2nd or 3rd, and
17 allegedly ratify the agreement unanimously 25 days
18 later?

19 A. I go back to my previous answer, that
20 ratification is just pure window dressing to try to
21 make things look better because they had already
22 claimed it was a unanimous vote, and now they're
23 trying to put one on the record.

24 Q. And when you say that "they already

Page 151

Page 153

1 (Attorney Cohen left the deposition.)

2 BY MR. BRAUTIGAM:

3 Q. Dr. Walker, can you please direct my
4 attention to where the date August 27th, 1999, is
5 in reference in the proxy materials?

6 A. I don't think it's there anywhere.

7 Q. It's not there, is it?

8 A. No, it's not.

9 Q. Mr. Burke this morning attempted to
10 suggest that the OHSL board had really unanimously
11 approved the merger on August 27th, 1999, as
12 opposed to the referenced date in the proxy
13 materials, August 2nd, 1999.

14 If that's true, do you believe that that
15 would be an adequate fulfillment of the fiduciary
16 duties of the OHSL board?

17 A. No.

18 Q. Why not?

19 A. It's an after-the-fact, basically
20 irrelevant action, because they were proceeding
21 based on the August 2nd vote. The only reason I
22 can see for the August 27th would be window
23 dressing to make things look a little better, like
24 it really was a unanimous vote.

1 claimed that it's a unanimous vote," it's your
2 belief that this vote was, in fact, not unanimous,
3 correct?

4 A. That's correct.

5 Q. Dr. Walker, as part of your
6 administrative duties at the University of
7 Cincinnati as an associate dean, you often
8 participate in committee meetings, correct?

9 A. Far more than I would like to.

10 Q. And in fact, minutes are kept at some of
11 these committee meetings, correct?

12 A. That's correct.

13 Q. What constitutes a unanimous vote at
14 these committee meetings?

15 A. It varies with the committee, but for
16 the -- probably the most prominent is those present
17 and voting. By that, I mean those who -- everybody
18 there has to vote for it. If anybody abstained,
19 then it's no longer unanimous. If anybody votes
20 against it, obviously it's not unanimous.

21 Q. If someone is not there, that would be
22 reflected in the minutes, correct?

23 A. That would be reflected.

24 Q. Now, the OHSL and Provident defendants

39 (Pages 150 to 153)

Page 154

1 have suggested in court filings that the vote on
2 August 2nd, 1999, really was unanimous because it
3 was five to nothing. Do you agree with that?

4 A. Not when there were seven people
5 present.

6 Q. Actually, Dr. Walker --

7 A. Excuse me, six people present. Seven
8 directors. There were six people present. One was
9 not there, one did not vote, so it was not
10 unanimous.

11 Q. Why?

12 A. Everybody didn't vote for it. Unanimous
13 means as one. If you say the board votes
14 unanimously, you're saying every board member voted
15 for it.

16 Q. Do you believe that that's information
17 that a reasonable shareholder would be interested
18 in having?

19 A. Yes, I do.

20 Q. Why?

21 A. It tells them that at least some people
22 were not strongly enough in favor of the merger to
23 vote for it.

24 Q. Do you have Mr. Brinker in mind?

Page 156

1 Q. When you used that as an example, did
2 that come up spontaneously, or do you recall that
3 from Ms. Preston's expert report?

4 A. I really can't say whether I recall it
5 from her report, but I do recall reading about it
6 in the press. I do know that it was quite the hot
7 topic for a while, and it may be that reading her
8 report triggered me to think about it again. I
9 can't really say that. I can't say that it didn't
10 either.

11 Q. Do you believe that Mr. Hewlett's
12 opposition -- his active opposition to the merger
13 with Compaq -- had an affect on the shareholder
14 vote?

15 A. It certainly caused some people to take
16 a second look and reassess their position. It may
17 not have affected the outcome. In fact, I don't
18 think it did. But it did cause some people to
19 reassess, and I'm sure some people did change their
20 vote.

21 Q. So if it didn't affect the outcome, why
22 do you think it's relevant?

23 A. Well, let me transfer this over to Oak
24 Hills. Oak Hills was a very narrow vote in support

Page 155

1 A. I don't have anybody in mind who
2 actually did not vote. Mr. Brinker, if he
3 abstained, clearly I have him in mind.

4 Q. Is it your understanding that
5 Mr. Brinker did abstain at the August 2nd, 1999,
6 vote?

7 A. That's what I have read, yes.

8 Q. And do you believe that that is a change
9 in vote from his affirmative vote in favor of on
10 July 22nd, 1999?

11 A. It's definitely a change.

12 Q. Do you believe that this information
13 should have been disclosed?

14 A. I think it should have.

15 Q. Why?

16 A. Again, shareholders need to know how the
17 directors are voting. They need to know if there
18 really is unanimous support. Whether he changed
19 his mind or simply changed his vote is irrelevant.
20 The information should be disclosed.

21 Q. Dr. Walker, this morning, you testified
22 with Mr. Burke a little bit about the HP-Compaq
23 merger. Do you remember that topic generally?

24 A. Yes, I do.

Page 157

1 of the merger. It wouldn't take many votes being
2 changed to reverse it. And I think in the case of
3 HP, the vote was much closer than it originally
4 would have been without the opposition from
5 Hewlett.

6 Q. Whether Mr. Hanauer's opposition and
7 other factors would have changed the terms of the
8 merger or affected the ultimate outcome of the
9 merger, do you believe that the shareholders were
10 entitled to full and complete information?

11 A. Yes, I believe in complete transparency.

12 Q. Why do you believe that?

13 A. Shareholders make decisions based on
14 available information. The more information they
15 have, the better decision they can make.

16 Q. Why isn't it okay to just deem all of
17 this stuff irrelevant if you believe that the
18 merger would have gone through anyway?

19 A. Just in general principle, the issue of
20 disclosure is very important. You have to disclose
21 information to shareholders.

22 But to respond to your answer a little
23 differently, I don't really think that it is
24 irrelevant. I think had that information been

40 (Pages 154 to 157)

Page 158

1 known, it's quite likely that the outcome would
2 have been reversed.

3 Q. Dr. Walker, how can you say that when
4 you didn't conduct a survey of the approximately
5 900 OHSL shareholders?

6 A. Well, I've seen testimony of at least
7 one shareholder who would have voted 40,000 shares
8 differently; and negative information is clearly
9 going to influence some people. I can't tell you
10 exactly how many, but I think it would have been a
11 sizable number.

12 Q. Dr. Walker, when you undertook this
13 assignment, why did you not attempt to contact some
14 or all of these 900 shareholders and take a poll or
15 do a study or do something?

16 A. I did -- well, one, I really didn't view
17 that within the scope of what I was asked to do
18 because I was asked to comment on the conduct of
19 the directors, not on the outcome of the merger.

20 And for another perspective, just my
21 knowledge of how information affects valuation and
22 decisions and markets would make me think that it
23 would clearly have an effect on some people.

24 When you add in that you have at least

Page 160

1 substantial if a merger went through, correct?

2 A. The difference is fairly substantial
3 from what they would have gotten had it gone
4 through and had it not gone through.

5 Q. Dr. Walker, you understand that
6 litigation was instituted against the merger in
7 state court in 1999, correct?

8 A. Yes, I do.

9 Q. And you understand that the plaintiffs
10 in that action had sought an injunction, correct?

11 A. Correct.

12 Q. And you further understand that the
13 injunction was denied, correct?

14 A. That's correct.

15 Q. Is it your belief that the injunction
16 was denied in part upon the oral argument made to
17 the court in opposition to the injunction?

18 A. That's my understanding.

19 Q. Is it also your understanding that
20 Mr. Burke represented to the state court that the
21 vote of the OHSL board of directors in favor of the
22 merger with Provident was unanimous?

23 A. Yes, that's my understanding.

24 Q. And it's your opinion that that is not a

Page 159

1 one person saying "I would have voted my 40,000
2 shares differently," then I think the likelihood of
3 the outcome being reversed is quite high.

4 Q. Dr. Walker, you testified with respect
5 to McDonald Investments earlier today. Do you
6 remember that subject coming up?

7 A. Yes, I do.

8 Q. And McDonald Investments served as the
9 investment banker for the transaction. Do you
10 remember that?

11 A. That's correct.

12 Q. Did McDonald Investments have an
13 incentive to have some type of merger go through?

14 A. Certainly. Investment banking firms get
15 a fee for their studies, but they also get a piece
16 of the deal whenever it goes through, some
17 percentage or payment based on the consummation of
18 the merger. If it doesn't go through, they make
19 less.

20 Q. In this case, they'd make a lot less,
21 correct?

22 A. I don't know the exact figures, but it
23 was fairly substantial.

24 Q. Their compensation was only fairly

Page 161

1 true statement, correct?

2 A. That is not a true statement.

3 Q. Is it also your understanding that
4 Mr. Burke represented to the state court judge that
5 McDonald Investments had solicited six offers, six
6 bids, and that Provident's was the highest?

7 A. I heard that that's what was said, yes.

8 Q. If that was said by Mr. Burke, was that
9 true?

10 A. Not from what I've been able to gather
11 reading the testimony and the minutes. I believe
12 that Provident was the only actual offer.

13 Q. So if Provident was the only actual
14 offer, it would be wrong to say that there were six
15 bids and that Provident's was the highest, correct?

16 A. That's correct. It would be totally
17 wrong.

18 Q. Why?

19 A. Well, if there's only one bid, it can't
20 be the best of six.

21 Q. Dr. Walker, let's go back to Robert's
22 Rules of Order. Do you understand that Robert's
23 Rules of Order generally talk about the chairman of
24 the board voting only in circumstances where a tie

Page 162

1 needs to be broken?
 2 A. My understanding.
 3 Q. Do you know whether or not the OHSL and
 4 Provident defendants have cited to, I believe, the
 5 Tenth Edition, which was published in 2000, as
 6 somehow affecting this 1999 transaction?
 7 A. Don't think that works.
 8 Q. Let's talk about two votes: July 22nd,
 9 1999, and August 2nd, 1999. With respect to
 10 Mr. Brinker's affirmative vote at the first
 11 meeting, July 22nd, 1999, can you do the math --
 12 did a tie need to be broken at that point?
 13 A. No.
 14 Q. But it's your understanding that
 15 Mr. Brinker affirmatively voted, correct?
 16 A. Yes.
 17 Q. Does that suggest to you that the board
 18 was not using Robert's Rules of Order, or at least
 19 not using it consistently?
 20 A. That's correct.
 21 Q. Let's fast forward to the August 2nd,
 22 1999, special meeting. Is it your understanding
 23 that Mr. Brinker did not vote?
 24 A. Yes.

Page 163

1 Q. Do you consider that to be an
 2 abstention?
 3 A. I don't know whether you're calling it
 4 an abstention or just a not vote. It depends on
 5 how it's set up.
 6 Q. Is there any difference in your mind
 7 between a formal abstention and simply not voted?
 8 A. In some circumstances, yes, because if
 9 you ask -- someone who doesn't want to vote will
 10 ask to be recorded as an official abstention.
 11 Q. What about in these circumstances?
 12 A. I don't think that he did. It looks to
 13 me like it's a non-vote, but I'm not sure of that.
 14 Q. You're familiar with the background of
 15 the acquisition as it appears in the proxy
 16 materials, correct?
 17 A. Yes.
 18 Q. Let me direct your attention to one
 19 specific section. Would you read that paragraph to
 20 yourself. It's the paragraph on page 20 from July
 21 22nd, 1999, to August 2nd, 1999.
 22 A. Yes. (Examining document.) Okay.
 23 Q. Do you see where that section refers to
 24 the OHSL board?

Page 164

1 A. Yes.
 2 (A brief break was taken.)
 3 BY MR. BRAUTIGAM:
 4 Q. Dr. Walker, have you had opportunity to
 5 read that paragraph to yourself?
 6 A. Yes, I have.
 7 Q. Did the composition of the OHSL board
 8 change in this period from July 22nd, 1999, to
 9 August 2nd, 1999?
 10 A. Yes, it did. Tom Herron resigned prior
 11 to the August 2, 1999, meeting.
 12 Q. Is that disclosed in that sentence, in
 13 that paragraph, or anywhere else in the proxy
 14 materials?
 15 A. It's not disclosed in that paragraph or
 16 sentence. It's not disclosed affirmatively
 17 anywhere in the proxy materials.
 18 Q. Do you believe that in this context,
 19 that's misleading?
 20 A. Yes, I do.
 21 Q. Why?
 22 A. Well, the implication here is that the
 23 same board voted both times, but it usually refers
 24 to the OHSL board. It says nothing about "as

Page 165

1 constituted at that particular point" or anything
 2 else. It just says that the board voted on July
 3 22nd, and the board voted on August 2nd.
 4 Q. And do you believe that the production
 5 and dissemination of proxy materials that don't
 6 disclose what you just said is a violation of the
 7 fiduciary duties of the OHSL directors?
 8 A. Yes, I do. I think it's relevant
 9 information, or if you prefer, material
 10 information. It could have had an affect on
 11 shareholder votes.
 12 Q. Whether or not it had an affect on any
 13 actual shareholder vote, is that something that you
 14 believe a reasonable shareholder would want to
 15 consider in arriving at his or her decision as to
 16 how to vote on the merger?
 17 A. Certainly I believe they would want to
 18 know that that happened and would like to explore
 19 why that happened.
 20 Q. Mr. Burke asked you a question this
 21 morning about the mental capacity of the directors,
 22 and the thrust of his question was that you didn't
 23 meet these directors in 1999, so you're unable to
 24 form an opinion with respect to their mental state

42 (Pages 162 to 165)

Page 166

1 in 1999. Do you remember that testimony generally?
 2 A. Yes, I do.
 3 Q. Now, some of the depositions you
 4 reviewed are from 2000, correct?
 5 A. That's correct.
 6 Q. And some of the depositions that you
 7 reviewed are from 2004; is that correct?
 8 A. That's correct.
 9 Q. Without being an expert on mental
 10 capacity and decline due to aging or other things,
 11 do you have any reason to believe that these
 12 directors were substantially more aware of what was
 13 going on in 1999 than they were in 2000 and 2004?
 14 A. No, I don't.
 15 Q. Why not?
 16 A. Well, those in 2000 were fairly close to
 17 the event, and not a lot of time had passed, and I
 18 wouldn't think there had been significant
 19 deterioration. 2004 is a little bit more
 20 problematic, but still, there's nothing to indicate
 21 to me that there was a substantial decline.
 22 Q. Dr. Walker, you talked about the OHSL
 23 board functioning almost as a club. Do you
 24 remember that testimony?

Page 167

1 A. Yes, I do.
 2 Q. What did you mean by that?
 3 A. Some of the references were made
 4 "getting together with the boys"; the apparent
 5 heavy nepotism involving Brinker's children in the
 6 situation.
 7 They just seemed to think of themselves
 8 as the old neutral association board, not as
 9 directors of a public company. That's an issue
 10 that happened frequently with these S&L
 11 conversions.
 12 The board that had been there when they
 13 were mutual really didn't grasp the
 14 responsibilities when they become public
 15 corporations.
 16 Q. How do you know that?
 17 A. Well, I mentioned earlier that I was a
 18 shareholder in Gateway after they converted, and I
 19 did sell out fairly quickly, and that was one of
 20 the reasons; and I observed other instances of this
 21 as well.
 22 Q. Dr. Walker, do you know what it means
 23 when someone is said to have left money on the
 24 table?

Page 168

1 A. Yes, I do.
 2 Q. What does that mean?
 3 A. Means there's money you could have
 4 picked up in some way. Maybe you exercise a stock
 5 option, maybe you sell something for a higher price
 6 -- you could have sold it for a higher price -- you
 7 can use it in a lot of different contexts.
 8 Q. I understand that as you sit here today,
 9 you don't remember whether or not you saw
 10 Mr. Herron's resignation letter; is that correct?
 11 A. I know what the context -- I don't know
 12 if I saw it or read it. He said he was resigning
 13 for travel reasons and otherwise.
 14 Q. Did Mr. Herron's resignation letter also
 15 indicate that he was leaving money on the table?
 16 A. He said he was not going to exercise his
 17 stock options, which is leaving money on the table.
 18 Q. And you have since read Mr. Herron's
 19 2004 affidavit, correct?
 20 A. Correct.
 21 Q. And what did he say about his reasons
 22 for leaving money on the table in his resignation
 23 letter?
 24 A. The whole thing was -- he did not want

Page 169

1 to embarrass the board members because his father
 2 had been a director for a number of years, and he'd
 3 known these people for a number of years, and he
 4 didn't feel he should profit from exercising these
 5 options, and he left.
 6 Q. Do you believe that Mr. Herron's
 7 decision to leave money on the table is somehow
 8 significant to the opinions you're offering in this
 9 case?
 10 A. Yes, I do.
 11 Q. Why?
 12 A. I think had he been resigning for the
 13 reason he really said he was, he probably would
 14 have exercised those options. And I think he left
 15 because he was opposed to the merger and he didn't
 16 want to benefit indirectly from it.
 17 MR. BRAUTIGAM: Let's go off the record.
 18 BY MR. BRAUTIGAM:
 19 Q. Dr. Walker, let's talk about
 20 Mr. Herron's golden parachute. You know what that
 21 phrase means?
 22 A. Herron's?
 23 Q. Excuse me. Mr. Hanauer's golden
 24 parachute.

43 (Pages 166 to 169)

Page 170

1 A. Yes, I do.
2 Q. You know what that phrase means,
3 correct?
4 A. Certainly. Get paid off if the
5 organization ceases to exist.
6 Q. And that's sometimes referred to as a
7 change of control contract, correct?
8 A. Correct.
9 Q. Is it your understanding that
10 Mr. Hanauer's change of control contract calling
11 for the payment of \$375,000 to him was finalized at
12 some point between July 22nd, 1999, and August 2nd,
13 1999?
14 A. That's my understanding.
15 Q. Is it also your understanding that
16 Mr. Hanauer testified that this had no affect, or
17 words to that effect, on his decision to change his
18 vote from abstain to in favor of?
19 A. Yes, I am.
20 Q. Is it your opinion that that testimony
21 should be taken with a grain of salt?
22 A. Yes, I think it should be taken with a
23 grain of salt because \$375,000 is a pretty good
24 reason to say, Yeah, I'll go along with it.

Page 171

1 Q. Do you recall seeing in Mr. Hanauer's
2 testimony something about the ramification of
3 dissenting votes in the context of the merger
4 transaction?
5 A. I can't say that I do.
6 Q. Are you familiar with the general
7 concept of the ramifications of dissenting votes in
8 the M&A context?
9 A. Yes, I am.
10 Q. Please tell me what your understanding
11 of the ramification of dissenting votes is in this
12 context.
13 A. Well, dissenting votes clearly indicate
14 that at least some voting members think there's a
15 reason not to do it.
16 Q. Dr. Walker, let me stop you. That's
17 only true if the dissenting votes are disclosed,
18 correct?
19 A. It won't have any affect if it's not
20 disclosed.
21 Q. Please continue.
22 A. It should be disclosed. Shareholders
23 need to know there is dissension. They need full
24 information. I'll use the phrase I've used before,

Page 172

1 "transparency."
2 Q. What do you mean by that phrase?
3 A. That nothing is hidden. Everything is
4 out in the open. The shareholders know what
5 information the board had and certainly how the
6 board voted. These are their representatives.
7 They'd like to know how they're being represented.
8 Q. Dr. Walker, in your previous answer, you
9 used the phrases "nothing is hidden" and
10 "everything is out in the open."
11 How would you respond to the defendants
12 who suggested that the shareholders don't need to
13 get bogged down in minutiae; and in fact, if some
14 of these things were disclosed, for example
15 Mr. Herron's resignation, that it would only
16 confuse them?
17 A. I don't buy it.
18 Q. Can you amplify that answer?
19 A. Well, it might confuse shareholders, but
20 that may be what's necessary in this case to make
21 them reconsider the issue; what's actually going
22 on.
23 Failure to disclose that information is
24 disguising what's actually happening, and I think

Page 173

1 the shareholders have the right to know how this
2 process proceeds.
3 It's not unusual to see opposition to a
4 merger or transaction change over time as the terms
5 of the merger change; but in this particular case,
6 there only seems to be just a change in vote and
7 nothing else.
8 Q. Dr. Walker, do you believe that you're
9 qualified to be an expert in economic damages or in
10 valuation?
11 A. Certainly.
12 Q. And you weren't asked to do that in this
13 case, correct?
14 A. No, I was not.
15 Q. Dr. Walker, do you also believe that you
16 could opine on, generally, the meaning and purpose
17 of proxy materials?
18 A. Yes, I think I can.
19 Q. But you weren't asked to do that?
20 A. No.
21 Q. Please summarize again what you
22 understand your assignment was.
23 A. Basically, I was to look at whether or
24 not the Oak Hills board of directors met their

44 (Pages 170 to 173)

Page 174

Page 176

1 fiduciary responsibilities by properly representing
2 the interest of shareholders in this particular
3 transaction.

4 Q. Was this a particularly difficult
5 assignment?

6 A. No, I didn't think it was.

7 Q. Why not?

8 A. Because the paper trail in this case
9 pretty well indicates that they did not.

10 Q. Do you believe that this is in any sense
11 a close call?

12 A. No, I do not.

13 Q. Why not?

14 A. Just too much evidence that things were
15 covered up, things were not disclosed; that
16 apparently, the directors really didn't even
17 understand their responsibilities in some cases; a
18 question of whether a number of them even actually
19 understood the terms of the merger.

20 They don't seem to have understood their
21 responsibility in preparing the proxy materials or
22 at least overseeing the preparation of the proxy
23 materials.

24 Q. Do you believe in the fulfillment of

1 both have Mr. Brinker's signature as chairman of
2 the board and Mr. Hanauer's signature as the chief
3 executive officer?

4 A. Yes, they did. This is the only
5 document I've seen with only Mr. Brinker's
6 signature.

7 Q. And is that true in the entire six-year
8 history of OHSL as a public company?

9 A. I can't say for sure. The only ones I
10 have seen had both signatures.

11 Q. Is that of any particular significance
12 to you?

13 A. My understanding is that Mr. Hanauer
14 actually wanted his name taken off of it; that he
15 had originally signed it or was going to sign it,
16 and then did not want his name on it.

17 Q. Actually, I think his signature was
18 initially electronically affixed.

19 A. Electronically affixed. I assume that
20 Mr. Brinker's was as well.

21 Q. Is Mr. Hanauer's decision to have his
22 signature removed from the proxy materials of any
23 particular importance to you in rendering your
24 opinions?

Page 175

Page 177

1 their fiduciary duties, it was necessary for the
2 OHSL board to understand their responsibilities in
3 overseeing the publication and dissemination of the
4 proxy materials?

5 A. Yes, I do. It goes out over the
6 signature of the chairman of the board. So
7 basically, the board is endorsing whatever goes
8 out. They should understand it. If they don't
9 understand it, they shouldn't endorse it.

10 Q. Do you believe that Mr. Brinker's
11 signature on the first page of the proxy materials
12 constitutes an endorsement?

13 A. Yes, I do.

14 Q. Would you expect Mr. Brinker to either
15 have written that first page himself or to know how
16 it came to be created?

17 A. He certainly should know how it came to
18 be created and know the content and agree with it.

19 Q. Dr. Walker, have you seen other of
20 OHSL's public documents that were sent to the
21 shareholders from the time OHSL was a public
22 company from 1993 to 1999?

23 A. I suggest I've seen some.

24 Q. And the documents you've seen, did they

1 A. I think it is in light of the other
2 evidence that I've seen, particularly.

3 Q. What do you mean by that?

4 A. Well, he, himself, said that he was
5 opposed to it; his counsel said that he was opposed
6 to it; and he voted his shares against it. I think
7 it was just confirming he didn't want his name on
8 something he didn't support even though he had
9 voted for it.

10 Q. Dr. Walker, do you believe that with
11 respect to Mr. Herron's participation on the OHSL
12 board and his leaving the board, that it was
13 obvious from the circumstances that he was against
14 the merger?

15 A. I would say so. He had voted against
16 it, and he resigned just prior to the board
17 approving it. And in doing so, he cost himself
18 money by not exercising the option. And the reason
19 he offered for resignation, travel, was irrelevant.
20 If the OHSL board ceased to exist, there were no
21 meetings to attend.

22 Q. Dr. Walker, do you believe that
23 Mr. Hanauer's opposition to the merger was obvious
24 at least to the OHSL board and to their counsel,

45 (Pages 174 to 177)

Page 178

1 Dinsmore & Shohl, from the circumstances?
 2 A. Yes, I do.
 3 Q. Why?
 4 A. Initial votes against it; statements
 5 that --
 6 Q. Do you mean abstaining?
 7 A. No. He voted against the initial study.
 8 He was --
 9 Q. Oh, okay, but not specifically against
 10 the OHSL-Provident merger?
 11 A. No. His opposition was -- he basically
 12 wanted to stay independent, and I think that
 13 carried all the way through, which gave him
 14 opposition to the particular merger as well as
 15 just, in general, to not remaining independent.
 16 Q. Now, Dr. Walker, the OHSL and Provident
 17 defendants collectively, and some of the individual
 18 directors at Provident, have suggested that
 19 Mr. Hanauer was torn between his fiduciary duties
 20 as a board member and his personal belief that he
 21 wasn't ready to retire at 50. Do you have any
 22 comment on that?
 23 A. I can see that there's a possibility.
 24 Actually, there were three issues here. He's a

Page 179

1 board member, he is a significant shareholder, and
 2 he is an officer of the company.
 3 And I can see that there should be some
 4 differences, but his primary responsibility as a
 5 board member is to represent the interest of the
 6 shareholders. And his indication, at least as far
 7 as I can determine, was he didn't think it was the
 8 thing the company should do.
 9 Q. Dr. Walker, you're aware that
 10 Mr. Hanauer voted his 123,075 against the merger,
 11 correct?
 12 A. Yes, I am. At least as an individual
 13 shareholder, he opposed it.
 14 Q. Do you believe that that vote should
 15 have been disclosed to OHSL shareholders?
 16 A. I think he had a responsibility to the
 17 shareholders to let them know that he did not
 18 approve of the merger. If that involves telling
 19 them that he wasn't going to vote for it, yes.
 20 MR. BRAUTIGAM: No further questions.
 21 (DEPOSITION CONCLUDED AT 2:37 P.M.)
 22
 23
 24

MICHAEL C. WALKER, Ph.D.

Page 180

1 CERTIFICATE
 2 STATE OF OHIO :
 3 : SS
 4 COUNTY OF HAMILTON :
 5 I, Kelly Green, the undersigned, a duly
 6 qualified and commissioned Notary Public within and
 7 for the State of Ohio, do hereby certify that
 8 before the giving of the aforesaid deposition, the
 9 said MICHAEL C. WALKER, Ph.D., was by me first duly
 10 sworn to tell the truth; that the foregoing is a
 11 deposition given at said time and place by the said
 12 MICHAEL C. WALKER, Ph.D.; that said deposition was
 13 taken in all respects pursuant to Notice as to the
 14 time and place; that said deposition was taken by
 15 me in stenotype and transcribed by computer-aided
 16 transcription under my supervision; and that
 17 examination and signature to the transcribed
 18 deposition is not waived.
 19 I further certify that I am not a
 20 relative, employee of, or attorney for any of the
 21 parties in the above-captioned action; I am not a
 22 relative or employee of an attorney of any of the
 23 parties in the above-captioned action; I am not
 24 financially interested in the action; I am not, nor

Page 181

1 is the court reporting firm with which I am
 2 affiliated, under a contract as defined in Civil
 3 Rule 28(D).
 4 IN WITNESS WHEREOF, I hereunto set my
 5 hand and official seal of office at Cincinnati,
 6 Ohio, this 3rd day of February, 2005.
 7
 8

9 My commission expires: Kelly Green
 10 August 9, 2009 Notary Public/State of Ohio
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24

46 (Pages 178 to 181)